



7020-02

INTERNATIONAL TRADE COMMISSION

Certain Personal Transporters, Components Thereof, and Manuals Therefor

Investigation No. 337-TA-935

Commission Determination to Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337 and, on Review, to Modify the Initial Determination; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 28) of the presiding administrative law judge ("ALJ") granting complainants' motion for summary determination of violation of section 337 and, on review, to make certain modifications in the ID.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are

advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337"), on November 10, 2014, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire ("Segway") and DEKA Products Limited Partnership of Manchester, New Hampshire ("DEKA") (collectively, "Complainants"). 79 *Fed. Reg.* 66739-40 (Nov. 10, 2014). The amended complaint, as supplemented, alleges violations of Section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,789,640 ("the '640 patent"); 7,275,607 ("the '607 patent"); and 8,830,048 ("the '048 patent"); the claim of U.S. Design Patent No. D551,722 ("the '722 design patent"); the claim of U.S. Design Patent No. D551,592 ("the '592 design patent"); and U.S. Copyright Registration No. TX-7-800-563 by numerous respondents. *Id.* In particular, the notice of investigation named the following thirteen entities as respondents: Ninebot Inc., Ninebot (Tianjin) Technology Co., Ltd., and PowerUnion (Beijing) Tech Co. Ltd. (the "Ninebot Respondents"); Robstep Robot Co., Ltd. ("Robstep"); Shenzhen INMOTION Technologies Co., Ltd. ("INMOTION"); Tech in the City; and Freego USA, LLC ("FreeGo USA") (collectively, "Terminated Respondents"); UPTECH Robotics Technology Co., Ltd. ("UPTECH"); Beijing Universal Pioneering Technology Co., Ltd. ("U.P. Technology"); Beijing Universal Pioneering Robotics Co., Ltd. ("U.P. Robotics"); FreeGo High-Tech Corporation Limited ("FreeGo China"); and EcoBoomer Co. Ltd. ("EcoBoomer") (collectively, "Defaulting Respondents"); and Roboscooters.com ("Roboscooters"). The Commission's Office of Unfair Import Investigations was also named as a party.

In the course of the investigation, the ALJ issued the following IDs with respect to the

Terminated Respondents: ALJ Order Nos. 13 (Feb. 19, 2015) (*not reviewed* Mar. 18, 2015) (terminating respondent FreeGo USA by consent order); 19 (May 4, 2015) (*not reviewed* May 20, 2015) (terminating respondent Robstep by settlement); 23 (Jun. 19, 2015) (*not reviewed* Jul. 15, 2015) (terminating respondent INMOTION by settlement); 24 (Jul. 8, 2015) (*not reviewed* Jul. 28, 2015) (terminating respondent Tech in the City by consent order); and 27 (Aug. 20, 2015) (*not reviewed* Sept. 18, 2015) (terminating the Ninebot Respondents by settlement). The ALJ also issued an ID finding all of the Defaulting Respondents in default. *See* ALJ Order No. 20 (May 7, 2015) (*not reviewed* May 27, 2015). The sole remaining respondent Roboscooters participated in a preliminary teleconference on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation.

On July 8, 2015, Complainants filed a motion for summary determination of violation of Section 337 by defaulting respondents and respondent Roboscooters. The Commission investigative attorney filed a response in support of the motion. No other responses were filed.

On August 21, 2015, the ALJ issued an ID (Order No. 28) granting Complainants' motion and making recommendations regarding remedy and bonding. The ID finds, *inter alia*, a violation of Section 337 under subsection 337(g)(2) by reason of infringement of the '048 patent based on substantial, reliable, and probative evidence. 19 U.S.C. § 1337(g)(2). The ID also finds a violation by the defaulting respondents and respondent Roboscooters by reason of infringement of the '640 patent, the '607 patent, the '722 design patent, the '592 design patent, and U.S. Copyright Registration No. TX-7-800-563. No party petitioned for review of the ID.

The Commission has determined to review the ID in part and, on review, to clarify that

the authority for the ALJ to draw adverse inferences against respondent Roboscooters for its failures to act during the investigation and find Roboscooters in violation is found in Commission Rule 210.17, 19 C.F.R. § 210.17. On review, the Commission also corrects certain apparent typographical errors. Specifically, in the last paragraph on page 45, “Ex. 19” should be substituted for “Ex. 9,” the “FreeGo F3” should be substituted for the “WindRunner G1U.” Likewise, we substitute “Focxess” for “Estway” in the last paragraph on page 60. *See* ID at 45; 60. Furthermore, we substitute the clause “In support of their allegations in the Complaint that the Gen 2 PT vehicles practice claims of the Asserted Utility Patents,” for the first clause of the last sentence on page 65 of the ID. *See* ID at 65-66.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health

and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the expiration dates of each of the asserted patents and copyright, and state the HTSUS subheadings under which the accused articles are imported. Complainants are also requested to supply the names of known importers of the infringing articles. The written submissions and proposed remedial orders must be filed no later than the close of business on October 21, 2015. Reply submissions must be filed no later than the close of business on October 28, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 28. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or

before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-935") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: October 7, 2015

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